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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability (NOFA) for the Biomass Crop Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA) is announcing the availability of \$12.5 million in matching payments under the Biomass Crop Assistance Program (BCAP) for the collection, harvest, storage, and transport of eligible materials to qualified Biomass Conversion Facilities (BCFs) in fiscal year (FY) 2014. This notice confirms the requirements for BCFs to apply for qualification, and for eligible material owners to apply for BCAP matching payments.

DATES: Effective **[Insert date of filing for public inspection by the Office of the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Kelly Novak, telephone (202) 720-4053.

SUPPLEMENTARY INFORMATION:

Background

Section 9010 of the Agricultural Act of 2014 (the 2014 Farm Bill, Pub. L. 113-79) amends 7 U.S.C. 8111, reauthorizing BCAP. BCAP is an FSA program administered with Commodity Credit Corporation (CCC) funds, which was implemented through the regulations in 7 CFR part 1450. The purpose of BCAP project areas is to provide financial assistance to owners and operators of agricultural and non-industrial private

forest land who wish to establish and produce eligible crops. BCAP also offers assistance for the delivery of eligible biomass feedstocks to qualified BCFs that are collected or harvested directly from agricultural lands and forest lands. BCAP provides this assistance in two payment categories:

- Establishment and annual payments to certain producers who enter into contracts with CCC to produce eligible biomass crops on contract acres within BCAP project areas. (See 7 CFR part 1450 subpart C.)
- Matching payments for the delivery of eligible material to qualified BCFs by eligible material owners. (See 7 CFR part 1450 subpart B.) Qualified BCFs produce heat, power, biobased products, research, or advanced biofuels from biomass feedstocks. The 2014 Farm Bill added research as a use for BCFs.

The 2014 Farm Bill authorizes \$25 million annually to carry out BCAP and specifies that the Secretary must use not less than 10 percent, nor more than 50 percent, of the BCAP annual budget to make BCAP matching payments. This notice announces the availability of \$12.5 million in FY 2014 for the funding of BCAP matching payments. The remainder of the 2014 funds will be expended on technical assistance.

Technical assistance will be used for the implementation, operation, compliance, monitoring, and maintenance for all components of BCAP. Consistent with the definition of “technical assistance” in 7 CFR 1450.2, CCC will use a portion of the funding available in FY 2014 to ensure contract performance and acquire technical expertise for the conservation of natural resources on the land. Technical assistance will also include activities, processes, tools, and functions needed to support the delivery of technical

services such as resource inventories, training, data, technology, monitoring, and effects analyses. FSA plans to use the technical assistance money to establish either interagency agreements or modify a current contract for the required services.

There will be no funds in FY 2014 for establishment activities for project areas, except for payments under existing contracts, nor will there be funding for new project areas in 2014.

The activities of this NOFA will be carried out under the existing regulations in 7 CFR part 1450, except to the extent superseded by the mandatory changes of the 2014 Farm Bill, including the narrowed definition of “eligible material” and the lower matching payment cap. The 2014 Farm Bill excludes bagasse, among other items, from the definition of “eligible material” and requires that all woody biomass be harvested directly from the land. The 2014 Farm Bill also gives the Secretary authority to provide participants matching payments at a rate of up to \$1 for each \$1 per ton provided to the BCF, not to exceed \$20 per dry ton for a period of 2 years. That is a lower matching payment than the previously specified amount of \$45 per dry ton.

Scope and Policy Goals of this NOFA

The scope of this NOFA is limited to matching payments using up to \$12.5 million of the FY 2014 funds. With the limited timeframe for implementation in FY 2014, this limited scope of strategic and targeted implementation of only BCAP matching payments and improvement to technical assistance is the most effective plan for the use of the BCAP funds in FY 2014. Also, because of time limitations, FSA has decided to target the FY 2014 matching payment funding to the areas in which

agricultural land and public forestland impacts allow BCAP to meet present and future bioenergy production goals while furthering goals such as forest health. Public forestland is National Forest System land and Department of the Interior, Bureau of Land Management (BLM) land; that is U.S. Forest Service (USFS) and BLM public lands, respectively.

There are several factors that resulted in the focus on matching payments instead of project areas this fiscal year: In addition to the short time remaining in the 2014 planting cycle, the process to establish conservation plans for project areas, sign up for two separate contracts, review land eligibility, and submit project area proposals, this proposal evaluation and selection process takes considerable time for both the producer and FSA to be completed this fiscal year.

By comparison, the short time remaining before the end of FY 2014 does allow adequate time to qualify BCFs, contract with material owners, collect or harvest the eligible materials, apply for payment, and deliver materials to qualified BCFs.

The concentration of the BCAP matching payments in FY 2014 on agricultural residues and selected woody material from public forestland is in keeping with the statutory focus on preventative treatment and allows BCAP to support national initiatives aimed at the forest environment. For example, the targeting of woody eligible materials, which are the by-product of preventative treatments for hazardous fuels, disease, or insect infestation reduction, on public forestland assists in healthy forest management of public lands in urban-wildfire and fire danger zones and supports entrepreneurial efforts toward bioenergy research, biobased product, advanced biofuel, and combined heat and power developments. BCAP's targeting of agricultural residues, such as woody orchard waste,

assists in avoiding open incineration disposal that otherwise could be a potential air pollution source.

While the focus for the selected woody material is from public forestland, some additional woody materials will be eligible for matching payments from agricultural lands, such as orchard waste. One of the justifications for focusing the matching payments for selected woody material from public forestland is the time required in FY 2014 to obtain a forest stewardship plan that meets the needs of BCAP where such a plan does not already exist. As specified in the definitions at 7 CFR 1450.2, a “forest stewardship plan” for purposes of BCAP is a long-term, comprehensive, multi-resource forest management plan prepared by a professional resource manager and approved by the State Forester. The time required to obtain such a plan for private forest land lacking one is inconsistent with the time frame for application and delivery of eligible material for 2014 matching payments as set forth in this notice.

FSA will make matching payments funding available in FY 2014 at the 2014 Farm Bill’s maximum allowable rate of up to 50 percent of the \$25 million in available funding, in order to make available the opportunity to eligible material owners and at the same time achieve synergy with the USFS’ wood-to-energy and forest health initiatives and BLM’s hazardous fuel reduction efforts.

Qualified BCFs

Qualified BCFs are covered in the regulations in 7 CFR 1450.101. The regulations specify the requirements for a BCF to enter into an agreement with FSA acting on behalf of CCC, including what a BCF must agree to in writing.

FSA will accept submission for qualification from BCFs for FY 2014 from June 16, 2014 through July 14, 2014. Applications for certification as a BCF must be made at the relevant FSA State Office. The submission of BCF qualification must be postmarked or submitted by fax or e-mail to the FSA State Office's Conservation Specialist where the BCF is located by July 14, 2014.

Eligible BCF's must have feedstock suppliers who will collect or harvest and deliver the following selected eligible material:

- Agricultural or crop residue, including woody agricultural residues, such as orchard waste, that does not have an existing higher-value product market, as defined in 7 CFR 1450.2; or
- Woody materials only from public forestland. The eligible woody materials must be the by-product of preventive treatments for hazardous fuel reductions or containment or reduction of disease or insect infestations and must not have an existing market in that region.

FSA will provide qualification numbers (ID numbers for the facilities) to BCFs and post a listing of the qualified facilities on the BCAP webpage at www.fsa.usda.gov/bcap.

BCFs must first be qualified by FSA before eligible material owners may deliver the selected eligible material detailed above or apply for BCAP matching payments.

Previous BCF qualifications do not apply and will not be extended to make a facility eligible under this notice. Previous facility submissions requesting BCAP BCF qualification will not be considered.

To be considered a qualified BCF for the purposes of the BCAP matching payments, the facility must enter into a new agreement with FSA by close of business on July 14, 2014 and must:

- Use the eligible material for heat, power, biobased products, research, or advanced biofuels;
- Meet all applicable regulatory and permitting requirements by applicable Federal, State, or local authorities;
- Complete and submit the BCAP-1 overview form with applicable attachments; and
- Agree in writing to all of the requirements in 7 CFR 1450.101(a)(2)(i) through (a)(2)(vi) and maintain the ability to present evidence or documentation that eligible material was or will be converted into heat, power, biobased product, research or an advanced biofuel.

Once a BCF has met all the requirements and has been identified as a qualified BCF, FSA will carry out the actions specified in 7 CFR 1450.101(b)(1) through (b)(3) and post the location and contact information for the BCF and its qualification number on the BCAP webpage at www.fsa.usda.gov/bcap on or about July 21, 2014.

Qualified BCFs will be responsible for complying with their agreements with FSA and converting purchases from the approved eligible material owners under this notice into heat, power, biobased product, research, or advanced biofuel.

Not every BCF that meets all the requirements will automatically be selected as a qualified BCF. Given the limited funding for FY 2014, CCC may prioritize BCFs that have suppliers of eligible material types that best meet BCAP goals.

Matching Payments

Following the posting of the qualified BCFs on or about July 21, 2014, FSA will then provide an opportunity to the suppliers of those qualified BCFs to enter into a contract with FSA for BCAP matching payments, at the rate of up to \$1 for each \$1 per ton provided to the BCF in an amount not to exceed \$20 per dry ton for a period of 2 years, of the selected eligible materials. Eligible material owners may apply for an FSA contract following the posting in July of the qualified BCFs through August 25, 2014, or until there is no more available funding, whichever occurs first. The eligible material owners will submit their applications to the FSA county office in the county where the collection or harvest from the land will occur or where established farm records exist. Eligible material deliveries must occur on or before September 26, 2014 and requests for payments must be made on or before September 30, 2014.

To be eligible for payment, collection and harvest directly from the land of the selected eligible material must occur after:

- The completion and evaluation, by the appropriate FSA technical service provider, of the forest stewardship plan or conservation plan or equivalent plan for the land from which the selected eligible material is collected or harvested; and
- Approval of the contract between FSA and the eligible material owner.

Each approved eligible material owner must apply for payment at the FSA county office where their contract approval occurred.

In order to be eligible for a BCAP matching payment under this NOFA, a person or legal entity must meet the requirements in the regulations in 7 CFR 1450.102.

In order to qualify for a payment under this notice the eligible material must be one of the following types of renewable biomass:

- Woody materials that are by-products of preventative treatment for hazardous fuel reductions or containment or reduction of disease or insect infestations and do not have an existing higher-value product market and are collected or harvested directly from public forestland; or
- Agricultural residues or crop residues, including woody orchard waste, collected or harvested directly from agricultural lands, which include residues from agricultural land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States.

Eligible material must be delivered to a qualified BCF to be eligible for payment. The eligible material must also be collected or harvested directly from the land consistent with and only after a conservation plan or forest stewardship or equivalent plan has been developed and certified by the applicable FSA technical service provider. If the material is woody material from public forestland, the certification will also require submission of a plan evaluation by the applicable FSA technical service provider. Plans will at a minimum provide the information specified in the regulations in 7 CFR 1450.103(a)(2)(ii)(B) through (iii) and (3)(ii).

Materials are not eligible under this NOFA if they are:

- Agricultural residue or crop residue that is collected or harvested before a conservation or equivalent plan has been completed;
- Woody materials from public forestland that is collected or harvested before the forest stewardship or equivalent plan has been completed and evaluated by the appropriate FSA technical service provider;
- Delivered before approval date of the contract between the eligible material owner and FSA;
- Any woody material from public forestland or woody agricultural or crop residue that would otherwise be used for an existing higher-value product;
- Any otherwise eligible material collected or harvested from public forestland or agricultural lands that, after delivery to a biomass conversion facility, its campus, or its affiliated facilities, must be separated from an eligible material used for a higher-value product in order to be used for heat, power, research, biobased products, or advanced biofuels; or
- Bagasse; yard waste; food waste; algae; animal waste or by-products of animal waste including fats, oils, greases and manure; or material that is whole grain from any crop that is eligible to receive payments under title I of the 2014 Farm Bill or an amendment made by that title or other material excluded by the definition of eligible material in this NOFA.

BCAP matching payments will be for a term not to exceed 2 years as specified in the 2014 Farm Bill and 7 CFR 1450.106(a).

An eligible material owner must apply to participate in the matching payments component of BCAP as specified in 7 CFR 1450.104(b). The regulations in 7 CFR 1450.104(c) specify what is required to be included in the eligible material owner's application.

The regulations in 7 CFR 1450.104(d) through (f) specify requirements related to delivery and payments requests, and payments.

The regulations in 7 CFR 1450.105(a) specify what all participants whose payment application was approved are required to agree to.

Definitions

For the purposes of this NOFA, new or revised definitions include the following:

“Agricultural residue” means crop residue from agricultural lands including woody orchard waste.

“Dry ton” means one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content. Woody material dry ton weight is determined in accordance with applicable ASTM (American Society for Testing and Materials) standards.

“Eligible material” is renewable biomass as defined in 7 CFR 1450.2, except that the 2014 Farm Bill specially excludes from this definition:

(1) Material that is whole grain from any crop that is eligible to receive payments under title I of the 2014 Farm Bill or an amendment made by that title, including—barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; oilseeds including canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse; chickpeas, lentils, and dry peas; dairy products; sugar; and wool and cotton boll fiber;

(2) Animal waste and by-products including fat, oil, grease, and manure;

(3) Food waste and yard waste;

(4) Bagasse; and

(5) Algae.

The following terms are defined in the regulations in 7 CFR 1450.2:

- Advanced biofuel;
- Agricultural land;
- Animal waste;
- Biobased product;
- Bioenergy;
- Biofuel;
- Biomass Conversion Facility (BCF);
- Conservation plan;
- Delivery;

- Deputy Administrator;
- Eligible material owner;
- Equivalent plan;
- Food waste;
- Forest Stewardship plan;
- Higher-value product;
- Indian Tribe;
- Intermediate ingredient or feedstock;
- Legal entity;
- Matching payments;
- Operator;
- Participant;
- Producer;
- Project area;
- Project sponsor;
- Qualified biomass conversion facility;
- Renewable biomass;

- Socially disadvantaged farmer or rancher;
- Violation; and
- Yard waste.

Other Provisions

Violations will be handled as specified in 7 CFR 1450.4.

Appeals will be handled as specified in 7 CFR 1450.10.

Scheme or device will be handled as specified in 7 CFR 1450.11.

Filing of false documents will be handled as specified in 7 CFR 1450.12.

Paperwork Reduction Act Requirements

The information collection request for the BCAP activity is included in the approval of OMB control number, 0560-0082. (BCAP was merged with the Emergency Conservation Program (ECP).) The BCAP activity covered in this NOFA will not change the BCAP forms or the burden hours for those forms. The ECP and BCAP approved information collection request is being renewed as a separate effort, and it will be submitted to OMB for a 3-year approval.

Catalog of Federal Domestic Assistance

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this NOFA applies is 10.087, Biomass Crop Assistance Program (BCAP).

Environmental Review

FSA prepared a Final Programmatic Environmental Impact Statement (PEIS) for BCAP that was published in the Federal Register on June 25, 2010 (75 FR 36386-36387). The Record of Decision (ROD) regarding FSA implementation of BCAP according to the provisions of the 2008 Farm Bill was also published in the Federal Register on October 27, 2010 (75 FR 65995-66007). The BCAP PEIS was completed in accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and FSA regulations (7 CFR part 799). The decision record summarizes the reasons for FSA selecting the proposed action alternatives based on BCAP’s expected environmental and socioeconomic impacts and benefits as documented in the PEIS, all of which were considered in the decision.

Signed on June 5, 2014.

Juan M. Garcia,
Administrator,
Farm Service Agency, and
Executive Vice President,
Commodity Credit Corporation.

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